



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.7409 of 1998 (O&M)

Date of Decision: 09.08.2024

Reserved on: 25.07.2024

Nagar Panchayat/Notified Area Committee, Bholath
through its Executive Officer

...Petitioner

Versus

Joint Development Commissioner, IRD Chandigarh

...Respondent

CORAM: ***HOB'BLE MR. JUSTICE G.S. SANDHAWALIA***
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Naresh Prabhakar, Advocate
 for the petitioner.

Ms. Arundhati Kulshreshtha, AAG, Punjab
for respondents No.1 and 2.

Mr. Prabhjayot Singh Chahal, Advocate for
Mr. G.S. Nagra, Advocate
for respondent No.5.

None for the remaining respondents.

Meenakshi I. Mehta, J.

By way of the instant Civil Writ Petition, the petitioner has sought the indulgence of this Court for the issuance of a writ in the nature of certiorari, quashing the order passed by respondent No.2 on 10.06.1988 (Annexure P-3), whereby the application filed by respondent No.3-Sukhjot Pal Singh against Gram Panchayat, Bholath (the predecessor-in-interest of the petitioner) under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961') for claiming his ownership over the land comprised in Khewat Khatoni No.258/447 Khasra No.35//16/1/1 measuring 16 Marlas,



situated in Bholath East, Tehsil and District Kapurthala (for short 'the disputed land'), has been allowed and also the order handed down by respondent No.1 on 04.06.1997 (Annexure P-7), allowing the appeals, preferred by respondents No.3 to 5 and respondent No.13.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of the present Writ Petition, are that the above-named respondent No.3 filed the afore-referred application against the Gram Panchayat, while averring that earlier, his father Jaswant Singh had remained in possession over the disputed land for 35-40 years and after his father's death, he was in possession over the same and he was ready to purchase this land on the price, as might be assessed by the Collector. The then Sarpanch of the Gram Panchayat conceded to the above-mentioned offer of respondent No.3. After the assessment of the Collector's price by the Assistant Tehsildar, Bholath, an amount of Rs.1640/- had been paid by respondent No.3 to the Sarpanch and the afore-said application had been decided vide the impugned order dated 10.06.1988 (Annexure P-3) and respondent No.3 was ordered to be considered as the owner in possession of the disputed land.

3. Feeling aggrieved by the above-referred order, the Social Education & Panchayat Officer and Ajit Singh S/o Phuman Singh and Ajit Singh S/o Narain Singh filed their separate appeals before the Additional Director, Panchayat (exercising the power of the Commissioner) who, vide the order (Annexure P-4) dated 24.10.1991, allowed these appeals and set-aside the order Annexure P-3. The review-petitions, as moved by respondent No.13 and respondents No.3 to 5, were also dismissed by respondent No.1 vide the order (Annexure P-5) passed on 13.10.1995.



4. Thereafter, respondent No.5 approached this Court to challenge order Annexure P-4 by filing **CWP No.2179 of 1986**, which had been allowed on 03.02.1997 vide the order Annexure P-6 and the case had been remanded with the direction to respondent No.1 to decide the same afresh after granting the appropriate opportunity to all the concerned persons. In compliance of the afore-said direction, respondent No.1 passed the impugned order Annexure P-7 and allowed the appeals (earlier treated as the review-petitions).

5. In the instant Writ Petition, respondent No.2 filed its written-statement, submitting therein that the father of respondent No.3 had been in possession over the disputed land since long and the Sarpanch of the Gram Panchayat had made a statement to the effect that he had no objection if the said land was given to respondent No.3 on the market rate. Respondent No.3, in his written-statement, has asserted that his father had remained in possession over the disputed land for a long time and this land had rightly been sold to him. Respondent No.5 filed his separate written-statement and respondents No.4, 8 and 9 to 13 submitted their joint written-statement (here-in-after respondents No.5 and 4 & 8 to 13 to be referred as 'the vendees-respondents) wherein they have taken the plea that they had purchased the disputed land for consideration and were, thus, *bona-fide* purchasers thereof.

6. We have heard learned counsel for the petitioner as well as learned State counsel for respondents No.1 and 2 and learned counsel appearing for respondent No.5 in this petition and have also perused the file carefully.

7. Learned counsel for the petitioner has contended that the Gram Panchayat was the owner of the disputed land and Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1963 (for short 'the Rules of 1963') lays down the procedure for the sale of Panchayat land and therefore,



the Sarpanch did not have the power to make the statement before respondent No.2 regarding having no objection to the claim of respondent No.3 over the said land, without resorting to the above-mentioned prescribed procedure and moreover, respondent No.3-Sukhjit Pal Singh had further sold the disputed land to respondents No.4, 5, 9, 10, 11 and 12 vide the sale-deed dated 16.11.1990 (Annexure R-4/2) during the pendency of the afore-said appeal, as preferred by the Social Education & Panchayat Officer to assail the order Annexure P-3 and in these circumstances, the above-referred vendees-respondents cannot be considered to be the *bona-fide* purchasers of the said land.

8. Per-contrā, learned counsel appearing for respondent No.5 has argued that respondent No.5 and the other vendees-respondents had purchased the disputed land from respondent No.3 in view of the entry in the *Jamabandi* Annexure R-5/1/T (also annexed as R-4/1) qua his ownership over this land and thus, they, being the *bona-fide* purchasers, cannot be divested of their title in the said land.

9. It goes undisputed between the parties that earlier, the Gram Panchayat was the owner of the disputed land and the Act of 1961 and the Rules of 1963, as framed thereunder, govern the affairs pertaining to the said land and on the constitution of the petitioner-Nagar Panchayat, this land has been taken over by it (petitioner) as its owner. Rule 12 of the Rules of 1963 prescribes the procedure for the sale of '*shamilat land*' vested in the Gram Panchayat and the same reads as under: -

“12. Purpose for which land may be sold. [Sections 5 and 15(2)(f) of the Act]. – (1) A Panchayat may, with the previous approval of the Government, sell land in Shamilat Deh vested in it under the Act for:--

(i) the purpose of constructing building for Block Samiti Office or any department of or institution recognised



- by the Government;*
- (ii) the purpose of any industrial or commercial concern;*
 - or*
 - (iii) executing such a scheme as may be a source of recurring income for the benefit of the inhabitants of the village;*
 - (iv) residential purpose of the inhabitants of the village.*
 - (v) for the purpose of financing the construction of building for schools and for veterinary and civil dispensaries in the Sabha area.*
- (2) Where it is proposed to sell the land in Shamilat Deh under sub-rule(1), the Panchayat shall forward to Government a copy of its resolution passed by a majority of the three-fourth of its members proposing to sell the land through the Panchayat Samiti and Divisional Deputy Director, Panchayati Raj stating--*
- (a) the area and location of the land proposed for sale;*
 - (b) the estimated income from the sale and whether the income would increase, if the land is sold after some years;*
 - (c) the reasons as to why the Panchayat wants to sell the land and the plans for utilization of the income from the sale.*
- (3) The publicity for sale of land in Shamilat Deh by auction shall be made by the Deputy Commissioner in accordance with the procedure laid down in sub-rule (10) or Rule 6 on receipt of the approval of Government who shall also decide whether the land should be sold in one or more lots and the officer who should be present at the auction."*

10. As discussed earlier, respondent No.2 had passed the impugned order (Annexure P-3) merely by taking the offer of respondent No.3 to purchase the disputed land and the statement of the then Sarpanch qua having no objection to the afore-said offer, into consideration because throughout in this order, there is not even a whisper about the facts, suggesting that the requisite resolution to sell the disputed land, as envisaged under Rule 12(2),



had ever been passed or any auction, as required under Rule 12(3), had been conducted for this purpose. It being so, it is crystal clear that the Sarpanch was not competent and had no power to accept the above-discussed offer of respondent No.3 for purchasing the said land.

11. Seen from yet another angle, Annexure P/1 is the copy of the *Jamabandi* pertaining to the year 1982-83 wherein the petitioner is shown to be the owner of the disputed land and one Sham Lal S/o Ram Daya is recorded to be the 'tenant at will' in this land. This fact, in itself, belies the version of respondent No.3, as put-forth in his application under Section 11 of the Act of 1961, to the effect that his father Jaswant Singh had remained in possession over the said land for 35-40 years. Further, Annexure P/2 is the copy of the *Jamabandi* for the year 1992-93 wherein respondent No.3 is shown to be the tenant in the disputed land. All the afore-discussed facts and circumstances unequivocally speak volumes of the fact that when tested on the touch-stone of the compliance of Rule 12 of the Rules of 1963, the order Annexure P-3 cannot be held to be legal at all.

12. Though, the vendees-respondents have asserted that they had purchased the disputed land vide sale-deed Annexure R-4/2, on the basis of the entry in the *Jamabandi*, Annexure R-4/1, regarding the ownership of vendor-respondent No.3 over this land and the above-mentioned vendor-respondent has claimed his ownership over the said land on the strength of order Annexure P-3 but in view of the observations made by us in the preceding paragraphs, it is held that the afore-referred order could not have conferred any valid title upon respondent No.3 in respect of this land as it is well-settled that no one can pass/transfer a better title in any property than the one himself has got therein. Even otherwise, it is also worth-while to mention here that the Social Education and



Panchayat Officer had filed an appeal before respondent No.1 on 22.08.1990 to challenge the order Annexure P-3, which was decided on 24.10.1991 vide order Annexure P-4, meaning thereby that the above-said sale-deed dated 16.11.1990 had been executed during the pendency of the afore-described appeal and these facts do attract the doctrine of '*lis-pendens*' and thus, cast a dark cloud on the transfer of the title qua the disputed land in favour of the vendees-respondents, by virtue of the above-referred sale-deed. In such circumstances, they cannot be considered to be the *bona-fide* purchasers and therefore, the impugned order Annexure P-7 passed by respondent No.1, declaring respondents No.3 to 5 and 13 as the owners of the disputed land, is also liable to be set-aside.

13. As a sequel to the fore-going discussion, it follows that both the impugned orders Annexures P-3 & P-7, are not legally sustainable. Resultantly, the Civil Writ Petition in hand is, hereby, allowed and both the afore-mentioned impugned orders are set-aside/quashed.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

09.08.2024
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Whether speaking/reasoned: Yes
Whether Reportable: Yes